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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 KOS MEDIA, LLC and
12 MARKOS MOULITSAS ZÚNIGA,

13 PLAINTIFFS,

14 VS.

15 RESEARCH 2000 AND DELAIR D. ALI,

16 DEFENDANTS.
17
18
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Case No.: 3:10-CV-02894 MEJ-

STATUS REPORT

CMC Hearing Date: April 28, 2011
Courtroom: B

Complaint filed: June 30, 2010.

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22 TO THE COURT, ALL THE PARTIES and THEIR ATTORNEYS OF
23 RECORD:

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25 Plaintiffs Kos Media, LLC and MARKOS MOULITSAS ZÚNIGA (Plaintiffs),
26 respectfully submit this Status Report regarding the parties' prospective settlement.

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BACKGROUND

1) The Parties

Plaintiff Kos Media LLC (“Kos Media”) is based in Berkeley California. It owns and operates the DailyKos (<http://www.dailykos.com>), the largest progressive community blog in the United States. Markos Moulitsas Zúniga is the founder, publisher, and sole owner of Kos Media. Defendant Research 2000 is a polling firm based in Olney, Maryland. Delair D. Ali (“Ali”) is the owner and CEO of Research 2000.

2) The Complaint

As part of its role as a news organization, Kos Media commissioned a number of polls from Research 2000, beginning in September 2007. Kos Media and Research 2000, through Moulitsas and Ali, entered into a series of agreements through which Kos Media would pay Research 2000 for political polling performed based on certain professional standards, including requirements for the number of individuals surveyed for each poll. Defendants breached their agreement with Kos Media by failing to perform the polls which they were contracted to provide, instead falsifying the data provided to the Kos Media.

The Complaint sets forth the following causes of action: 1) Breach of Contract; 2) Unfair Business Practices under Cal. Bus. & Prof. Code §§ 17200 et seq.; 3) Breach of Implied Warranty; 4) Intentional Misrepresentation; 5) Negligent Misrepresentation; 6) Constructive Fraud; and 7) Conversion.

3) Procedural History

Plaintiffs filed suit on June 30, 2011. The Complaint was timely served on Defendants. On behalf of himself, and Research 2000, Ali signed a waiver of service on or about August 05, 2010. (*See* Ex. A.) In the cover letter returning the waiver of

1 service, Ali's counsel stated that they would file a responsive pleading on or before
2 September 07, 2010. (*Id.*)

3 The parties made progress toward a settlement, and reached a general
4 understanding before Defendants' responsive pleading was due. Plaintiffs notified the
5 Court of the pending settlement. On September 09, 2010, the deadline for filing a
6 responsive pleading was extended by Court Order and pursuant to stipulation. (Doc.
7 No. 9.) The settlement agreement was signed by the parties.

8 The matter was set for a Case Management Conference for December 02,
9 2010. (*Id.*) The Case Management Conference was continued to January 13, 2011
10 pursuant to stipulation and Court Order. (Doc. No. 11.) On December 21, 2010
11 counsel for Defendants moved to withdraw from the case. (Doc. No. 12.) That
12 Motion was granted on January 06, 2011, leaving Defendants unrepresented by
13 counsel. (Doc. No. 16.) The Case Management Conference was continued to March
14 10, 2011. (Doc. No. 18.)

15 In lieu of the Case Management Conference on March 10, 2011, the Court
16 issued an Order continuing the Case Management Conference to April 28, 2011. (Doc
17 No. 22.) The Court also entered the following orders:

- 18 1. "if Research 2000 has not obtained counsel prior to the April 28 CMC,
19 the Court shall issue an Order to Show Cause as to why default should not be
20 entered against Research 2000 for failure to procure counsel;" and
- 21 2. "[i]f substantial progress towards the agree settlement payments is not
22 made prior to the April 28 CMC, Plaintiffs shall move for entry of default as to
23 Defendant Delair Ali.

24 25 STATUS

26 Research 2000 has failed to procure counsel.

27 With respect to Defendant Delair Ali, yesterday Mr. Ali wrote to Plaintiffs'
28 counsel stating that he sent a payment of \$9,000 by Federal Express to Plaintiffs'

1 counsel, Adam C. Bonin, in Philadelphia. He also promised to provide a tracking
2 number for that shipment. As of the close of business today, April 21, 2011, no
3 payment from Mr. Ali has arrived. The tracking number, supplied today, indicates
4 that the package will arrive on or about Tuesday, April 22, 2011. Plaintiffs would
5 characterize this payment as progress if it arrives.

6 This Court's last Order was timely served on Defendants.

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8 RECOMMENDATION

9 In view of these facts, Plaintiffs humbly submit that the Court should issue an
10 Order to Show cause as to why default should not be entered against Research 2000
11 pursuant to Civil Local Rule 3-9(b).

12 As to the individual defendant Ali, if the promised payment of \$9,000 arrives
13 early next week, and the check clears, Plaintiffs would characterize this payment as
14 progress. Accordingly, Plaintiffs request that the instant Conference be continued for
15 15 days. Defendant Ali's alleged payment could also be discussed on the date
16 presently set for the instant conference.

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